STUDIES IN ENGLISH CIVIL PROCEDURE.—III. THE COUNTY COURTS.*

V. Special Procedure.

There are several special forms of procedure in the county courts which it may be worth while to mention separately. Three are here selected for treatment. They are: actions by landlords against tenants for the recovery of possession of "small tenements," administration orders for small debtors under the Bankruptcy Act, and disputes under the Workmen's Compensation Act.[189]

1. A small tenement is any rented property of which the rent does not exceed £100 per annum; in certain cases the landlord of such property can recover possession of it from his tenant by entering an ordinary plaint in the local county court, and may, upon the same plaint, add a claim for rent or mesne profits. In this connection it should be borne in mind that the power of a county court to commit to jail a refractory debtor makes its judgment more efficacious in some cases than a distress for rent.

There are two classes of cases in which possession may be so recovered: (1) where the tenancy has expired or has been determined by due notice to quit,[190] and (2) where the rent is six months in arrear, and there is not sufficient personalty to make a distress satisfactory and the landlord has a right by law to re-enter for non-payment of rent.[191] The remedy by plaint in the county court provides a simple method of ejecting the tenant from possession.

Under the first section the dispute usually arises out of the

* Continued from the March number, 64 Univ. of Penna. L. Rev. 472.

[189] Default summonses (the most important variety of special procedure) were described in Section I, paragraph 8. Another form of special procedure (which it is not thought worth while describing here) is that under the Bills of Exchange Act, 1855, which, though transformed by the High Court into Order XIV of the R. S. C., still persists in the county court in its original insufficiency.

[190] Section 138, Act of 1888.

[191] Section 139, Act of 1888.

notice, which the tenant denies having received. In England six months' notice is required where the tenancy is from year to year; a month's notice for a monthly tenancy and a week's notice for a weekly. In actions under the second section the tenant has the right to pay into court the rent and costs if he chooses, thereby putting an end to the action.

The procedure is the same as in ordinary actions upon debts. A hearing day, from two to four weeks distant, is fixed when the plaint is entered, the summons is served by the bailiff together with the particulars which the plaintiff must file, and the parties then wait for the return day, unless either chooses to obtain some interlocutory discovery or to ask for a jury. Upon the return day the parties go into the judge's court, as the registrar does not hear actions of this character, which always involve more than £2. The judge, in making his order for possession, will usually take into consideration the tenant's circumstances. If the tenant appears to be honestly in difficulties the judge will make an order for "possession in four weeks" or "in six weeks"; if such leniency is not required he will order the tenant to clear out forthwith or in a short time named in the order. This discretion is the unique feature of the procedure, tempering its harshness in spite of the landlord's legal right.[192] Even when the time named in the order has expired the judge will, for good cause shown,—such, for instance, as that the tenant has been unable to obtain another house to move into—extend it.

This procedure cannot be used to settle any dispute over the title to the property; it is intended only for recovery of possession, although the judge will hear facts as to title in so far as they touch the right to possession.[193] When title is the subject of the litigation the county court can also be resorted to, as it has powers in ejectment; but these are of the usual character and do not introduce any novel procedure.

[192] Under Section 139 the order must give the tenant at least four weeks.

[193] In 1913 about 1300 warrants for possession were made under these two sections.

2. There are many differences between bankruptcy procedure in England and in the United States.[194] Outside of London the county courts are the tribunals which perform the judicial duties of bankruptcy procedure; not every county court is a court of bankruptcy—certain of the larger courts are invested with powers in bankruptcy and the smaller districts are apportioned among them.[195] But every county court, whether it is a court of bankruptcy or not, is given power by the Bankruptcy Act, 1883,[196] to make what are called "administration orders" for the relief of judgment debtors. If a county court judgment debtor is unable to pay the amount forthwith, and he has other debts the total of which does not exceed £50 (including the judgment debt) he may apply to have his estate administered by the court; and the court may order "the payment of his debts by instalments or otherwise, and either in full or to such extent, as . . . practicable, and subject to any conditions as to his future earnings or income which the court may think just." This is a useful application of the bankruptcy principle to small debtors who, unable to work themselves out of trouble, can be helped by the county court machinery for instalment payments. In many cases the order is for payment in full,[197] but the interposition of the court saves the debtor from having judgments and costs piled up against him, and the fixing of a maximum instalment to be paid monthly into court offers him time to settle up and gives him a definite prospect of ultimate freedom from debt. Instead of being harassed by a dozen different creditors, he has to deal only with the court, and to pay regularly into court the amount which it has fixed after due consideration of his earning power and his cost of living. The effect is to make his debts a charge on his wages instead of on his home.

The practice is essentially the same as in bankruptcy, simpli-

[194] See Williams' Bankruptcy Practice (1915), or Chalmers and Hough: Bankrupt Act (7th Ed., by Mackenzie and Clarke, 1915).

[195] One hundred and thirty-six of them are courts of bankruptcy.

[196] Section 122 of 46 and 47 Vict., c. 52, expressly unrepealed by the Bankruptcy Act, 1914 (4 and 5 George V, c. 59, Schedule VI).

[197] In 1913, out of 5426 administration orders made (the total indebtedness of each debtor averaging £25, 16*s*.), 2884 were for payment in full.

fied. There are no "involuntary" proceedings under the section; a debtor must apply for the order in the form provided, stating his employment, his wages, his employer's address, what family he has, what his wife earns, what his children earn, the reason for his inability to pay his debts, and the estimated value of his goods. He must affix a schedule of his creditors and their claims, showing which if any are secured, and which have power to distrain for rent or taxes. The creditors need not all have judgments.[198] He must also state whether he proposes to pay in full or by composition, and he must suggest an instalment which he is willing to pay every month or at any other interval, in discharge. This must be verified by affidavit. The debtor usually fills out the form in the court office, where he is assisted by one of the clerks and where there is no fee charged for the affidavit. If the debtor is illiterate the registrar or his clerk must fill out the form for him. No fee is payable upon filing this request. When several judgments are entered against a debtor known to the court to be in poor circumstances, it is very usual for the judge or the registrar to suggest to him that he ought to apply for an administration order to obtain relief.[199]

Notice of the application and of the date fixed for the hearing is sent by the court to every creditor scheduled. The creditor may attend personally at the hearing to question the debtor or to dispute the amount of his debt or the size of the composition or instalment offered, or he may send his objections to the registrar by mail, who will then communicate them to the debtor. If the points raised are such as to require a separate hearing, the registrar will fix one. The filing of the request stays proceedings on all judgments against the debtor in any inferior court.

At the hearing the judge may refuse to make the order [200]

[198] In 1913, out of 59,229 creditors affected by administration orders (the average claim being £2, 7s.), 39,548 were non-judgment, and 19,681 were judgment creditors.

[199] See Minutes of Evidence before the 1909 House of Commons Committee on Imprisonment of Debtors (R. 239. 1909), Questions 431, 1852 and 3915.

[200] In 1913, out of 6141 applications, 715 were refused.

or he may alter the size of the composition or instalments offered by the debtor, having regard to all the circumstances. The order, if granted, must be such as to be completely discharged within six years from its date. It is entered in the Registry of County Court Judgments, which amounts to public notice, as the various credit associations watch the Registry. The registrar or the chief clerk of the court is usually appointed to have the "conduct of the order," although any other person, for instance a creditor, may be appointed by the judge; such person, or the registrar, must then see that the instalments are promptly paid, and must issue a judgment summons (for committal to prison) in case of default;[201] and he must report to the judge any change in the debtor's circumstances which would call for increasing or decreasing the size of the instalments he must pay. If any facts come to the administrator's notice which would warrant the setting aside or rescission of the order, he must bring them to the judge's attention; such facts would be misrepresentation in procuring an order, the obtaining of subsequent credit without giving notice of the order, or repeated failure to pay the instalments as ordered.[202]

Scheduled creditors are barred from any other remedy and must accept their share of the instalments as distributed by the court. Costs are deducted by the court before making any distribution. Creditors subsequent to the order may send in proofs of debt and be scheduled, but will not receive dividends until all the prior creditors are paid according to the order.

The proceedings may be referred by the judge to any other county court which is considered more convenient to the debtor or to a majority of the creditors; the debtor must in the first instance file his request in the court where the judgment was obtained in respect of which he appeals for the order, irrespective of his place of residence and the request may be sent by mail if the court is out of the district where he resides.

[201] When a judgment summons is heard for such default the burden is, by Section 122 (6), put upon the debtor to prove he was without means, instead of, as in all other cases, being upon the creditor to prove he had means.

[202] See Question 3920, in Minutes of Evidence, cited *supra*, note 199.

If an application has been once refused, or if an order has been set aside or rescinded, the debtor cannot afterward apply again for an order without the leave of the court which refused or set aside the previous one.

The Act provides that rules for proceedings under it should be made by the Lord Chancellor, with the concurrence of the President of the Board of Trade; and a special set of rules under Section 122, called the Bankruptcy (Administration Order) Rules, 1902, has been issued giving full details to regulate the allowing or disallowing of claims, the conduct of the hearing and the order, and the distribution of the proceeds.[203]

Administration orders are not popular because of the obvious danger of allowing a debtor without means to run up an indebtedness of fifty pounds and then to escape his liabilities by making a composition for several shillings in the pound. Their use is discouraged, except when the application for one is made by a debtor who has incurred his debts in the course of trade. But the power to make an administration order cannot be denied to be useful, in face of the fact that in the last year more than five thousand such orders were made and that over half of them were for payment in full. Properly supervised by the court the power can be made an instrument of much good among the smaller debtors who come within the reach of the court. The greatest obstacle at present to its beneficial use is the exorbitant fees charged for administration orders by the Treasury, under the unfortunate policy of requiring that the courts must earn their expenses.[204]

3. The succeeding paragraphs of this section deal with the judicial functions of the county courts under the Workmen's Compensation Acts.[205]

[203] These twenty-nine rules are printed, together with Section 122, in the Annual County Courts Practice.

[204] See E. A. Parry: The Law and the Poor (1914), chapter on Bankruptcy, p. 106.

[205] For the best complete account of procedure in workmen's compensation cases, see Ruegg: Employers' Liability and Workmen's Compensation (8th Ed., 1910), Part II, Chapters X to XIII. More up-to-date and very popular is a handbook called Willis's Workmen's Compensation (published annually). Other commentaries are those of Beven, Dawbarn, Elliott, and Knowles &

Compensation for death or disability is granted in cases fixed by the Acts, and the Act of 1906 [206] authorizes rules to be made by the Rule Committee of the county courts for the regulation of all proceedings brought under it.[207] The liability for payment and the amount of compensation payable are determined either by agreement or by arbitration. If the employer and workman agree, a memorandum of their agreement must be recorded in the local county court. If they cannot agree the dispute must be submitted to arbitration before one of the tribunals enumerated in the Act: either an arbitrator agreed upon by the parties, or the judge of the local county court, or an arbitrator appointed by the judge, or a committee of the trade approved by the Secretary of State. In practice nearly all arbitrations are before the county court judge.

The first duty of the court is to record the memorandum, where an agreement has been come to. The usual sequence of events is that after the accident the employer's insurance company sees the workman and does its best to obtain his consent to the terms proposed by it; the workman is entitled to demand weekly payments based on his previous earnings, but he may if he chooses agree to accept a lump sum in redemption of weekly payments. And at any time after weekly payments have begun he may *agree* to accept a lump sum in redemption; after six months the employer has a *right* to redeem future weekly pay-

Parsons. For a brief account of the procedure from a sociological standpoint, see the chapter on Workmen's Compensation in Judge Parry's The Law and the Poor (1914).

[206] 6 Edward VII, c. 58. The act is printed in full in every book on the subject.

[207] The first rules were issued in 1907 and consolidated with their amendments in 1909. There were further amendments and these were consolidated with the rules in 1913, since when there have been more amendments. The present rules are called the Workmen's Compensation Rules, 1913-1914. They contain 101 rules and an appendix of 78 forms, covering all points of procedure under the act, and are printed in full in every book on the subject. There are separate sets of rules for the following special subjects: Regulations made by the Secretary of State and the Treasury as to the Duties and Remuneration of Medical Referees (with forms); Regulations similarly made as to the Duties and Fees of Certifying and Other Surgeons (with forms); Regulations as to Examinations of a Workman by a Medical Practitioner provided and paid by the employer; Rules of the Supreme Court Governing Appeals to the Court of Appeal under the Act. All these are printed in full in every book on the subject.

ments by a lump sum payment. Employers and insurers always prefer to get rid of their liability as soon as possible by paying down a lump sum. If the workman has been killed by the accident the agreement would be between the employer (or his insurer) and the workman's dependents, for a lump sum payment. Supposing the workman or his dependents should agree to the terms proposed, their signature must be obtained to the memorandum of agreement. This memorandum is then sent by the insurance company to the registrar of the local county court for recording, together with a copy to be served upon every person interested. The registrar notifies the interested parties of the receipt of the memorandum, and they have seven days within which to dispute its genuineness or good faith. Any objections must be notified in writing on the form provided. If they appear valid or if after investigation the registrar finds them to be so, he will refuse to record the memorandum, and will refer it to the judge together with a written report stating the grounds for his refusal. Even if no objections are raised by interested parties the registrar has a discretion to refuse to record the agreement "if he thinks it ought not to be registered by reason of the inadequacy of the amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means."[208] In such case also he must refer the memorandum to the judge, with a written report. The exercise of this discretion is a very real safeguard. The registrar is usually sufficiently familiar with local conditions to know if the amount agreed upon is a fair compensation for the injury described in the memorandum: and he will often withhold approval until he can satisfy himself that the agreement is one proper to register. In the cities he will often, in obvious cases, consult with the insurance company over the telephone and suggest that the agreement is one that could not properly be registered, the company taking the hint and making the workman a better offer. The rules require him in every case "to make such inquiries and obtain such information as he shall think necessary in order to satisfy himself

[208] Act, Schedule II (9) (d).

whether the memorandum may properly be recorded." [209] In general the attitude of the registrars and judges towards the subject is that the Act is a remedial one intended by the legislature to benefit the workman, and they administer the Act in such a way as always to give the workman the benefit of any doubt.

The judge, upon receiving the memorandum and the registrar's report, may disregard the objections raised and order the memorandum to be recorded without alteration. But if he is satisfied the agreement is improper a hearing day will be fixed, upon which the parties will be heard upon the one question: Shall the memorandum be recorded? It has been decided that upon that hearing the judge has no power to order variations to be made in the agreement;[210] he can only reject it if he finds it improper, and the parties must then agree anew or arbitrate.

In similar manner the judge has power, upon application by an interested party, even after a memorandum of agreement has been recorded, to strike it off the register if it can be shown that the amount is inadequate or the agreement was improperly obtained.

In 1913 there were 19,084 memoranda of agreement recorded.[211] In 528 cases the registrar refused to record; of these, 121 memoranda were withdrawn for rectification; the other 371 were referred to the judge, with the registrar's report. Of the 371, 203 were ordered by the judge to be recorded and in the other 168 cases other orders were made. In thirty-one cases where money was paid into court in lieu of an agreement, the registrar refused to record the payment and referred it to the judge on the ground of inadequacy. In sixteen of these the judge decided the amount to be adequate, and in the other fifteen

[209] W. C. R. 51 (2).

[210] Mortimer v. Secretan [1909], 2 K. B. 77.

[211] Statistics of workmen's compensation proceedings are published annually by the Home Office. The Blue Book for 1913 is Parl. Pap. Cd. 7669. It is stated, however, in the Annual County Court Statistics (for 1913, Parl. Pap. Cd. 7807, p. 103) that many informal agreements for compensation are never recorded, so that the published figures represent only a very small fraction of the cases so dealt with.

made other orders. In five cases the judge ordered the removal from the register of memoranda obtained by improper means. A memorandum of agreement, when registered, may be enforced like any county court judgment or order, by execution or judgment summons.

4. In many cases the parties are unable to agree, as there are many sources of dispute under the Act. Such disputes must be settled by arbitration and in nearly all cases that arbitration is before the county court judge. The parties may, if they can, agree on some one else, even a layman, to act as arbitrator; in fact it was the belief of the framers of the Act that laymen would usually be called in to arbitrate these disputes, and it was for that reason that the Act was framed in popular rather than technical language. But that hope has not been realized and almost from the very start the parties have preferred to go before the judge of the local county court. In 1913, 4735 arbitration proceedings were commenced in England [212] under the Act, and only ninety-five of these were heard by an arbitrator other than the county court judge.

Except for the informality of the proceeding there is little difference between an arbitration under the Act and an ordinary action in the county court.[213] The principal features of the arbitration are the absence of most of the usual court fees, the fact that a medical referee may sit with the judge as assessor, and the complete absence of juries. The proceeding is initiated by the filing at the court office of a "request for arbitration," stating full particulars of the injury and the compensation claimed. Upon this request a hearing day is fixed and notice is served on the respondent in the usual way. The respondent is required to file an answer setting forth all his reasons for contesting the applicant's claim. No discovery or other interlocutory proceedings are permitted, which is sometimes a disadvantage. As in ordinary actions the respondent may pay money

[212] There were 7532 arbitrations commenced in all, but 2797 were in respect of the review of already recorded orders. Of the new proceedings, 2695 were heard before a judge and 95 before an arbitrator; the rest were settled or dropped without hearing.

[213] W. C. R. 19, 61, 62.

into court.[214] At the hearing both parties may be represented by counsel. The proceeding is usually defended by the employer's insurance company, so that the employer drops out and there is no personal feeling between workman and employer over the result; again, except in the cases of skilled workmen, who do not usually belong to unions the application is pushed through by the workman's union, which pays any expense incurred. The respondent has the right to bring in any third party from whom he claims indemnity—for instance, a previous employer in whose service an industrial disease was contracted by the workman. These hearings frequently resolve themselves into a dispute of fact upon the medical testimony. There is no jury, but the judge may upon application by any party summon to assist him a medical referee to sit as assessor.[215] For this purpose a panel of medical referees is established by the Home Office, appointing three or four local doctors as eligible in each court, and the judge must call upon these in rotation.[216] In districts where special diseases are prevalent, specialists in these diseases are put on the panel; for instance, an ophthalmologist is very frequently one, and many courts have one for lead poisoning. The medical assessor's fee is three guineas and traveling expenses, which is not costs in the cause, but is paid by the Home Office. Medical referees assist in about one-quarter of the hearings under the Act.[217] Even if the judge hears the action alone, if he is in doubt as to the effect of the medical testimony, he may submit any question based upon it to one of the medical referees of his court, and may order the workman to be examined by such referee. The answers thereupon are not binding upon the judge any more than the views of an assessor who sits with him, but merely assist him in coming to a decision.[218] When a medical referee sits with the judge, he will usually, in the course of the hearing take the workman into a back room to examine him

[214] W. C. R. 29.

[215] Act, Schedule II (5); also W. C. R. 55.

[216] See the Medical Regulations cited *supra*, note 207.

[217] In 1913 an assessor sat in 745 out of 2695 hearings.

[218] Act, Schedule II (15); there were 84 such references in 1913. See W. C. R. 56.

after the medical testimony has been given. The judge's award, when entered has, like a recorded memorandum of agreement, the force of a judgment or order of the court. The judges are usually sympathetic to compensation claims; where a workman is in fact injured a judge will always try to find he should be compensated.[219]

5. If the difference between the parties relates solely to the workman's condition or fitness for work a shorter method of determination is open to the parties. They may apply to the registrar of the court for a reference of the question, after the workman has been examined by the employer's physician, to one of the medical referees of the court, and for an examination of the workman by such referee. The certificate made in such case by the referee is conclusive evidence of the illness so certified.[220]

6. If the judge's list is full with ordinary county court work, it is usual for him to refer the arbitration to a barrister, so as not to delay the parties for more than the usual period. This however is done in only a very small proportion of cases. Again, if the arbitration is held before a committee or any arbitrator other than a judge, such arbitrators may, if difficult questions of law arise, state a special case to the county court judge.[221] The judge's rulings of law upon such case are binding upon the arbitrators. Appeal may be taken from any decision of a county court judge under the Act direct to the Court of Appeal,[222] but solely on points of law.

7. The method in which compensation is payable varies with the character of the claim. If the workman was killed the compensation is paid in a lump sum for the benefit of the dependents. If he was injured the compensation is payable as a weekly payment fixed in proportion to his previous earnings and his present incapacity. By agreement, however, even after

[219] In 1913, out of 4422 awards, 3604 were for the applicant (the workman), and 818 for the respondent.

[220] Act, Schedule I (15); there were 437 such references in 1913. See W. C. R. 57.

[221] W. C. R. 34.

[222] There were 150 appeals in 1913, out of a total of 2780 hearings.

weekly payments have begun, a lump sum may be paid even in the latter case; and after six months the employer has a right to redeem weekly payments by a lump payment.[223] But there are other possibilities: after weekly payments have commenced the condition of the workman may alter for better or for worse, so that either the insurer (which is here synonymous with employer) may desire to have the amount of the weekly payment decreased, or the workman may desire to have it increased; or, the incapacity having ceased, the insurer may desire to have the payments terminated; or, the incapacity having returned after a period of recovery, the workman may desire to have them renewed;[224] or there may arise disputes amongst dependents as to the amount of compensation receivable by them *inter se*. In all these cases if the parties cannot agree an application must be made which is in the nature of a further arbitration, and the proceedings follow the same course as on the original arbitration.[225]

8. The money paid, in every case of a lump sum payment, must be paid not directly to the beneficiaries, but into court, as with any judgment debt in the county court. It is invested in the same manner as other funds in court; and it is never paid out *en bloc* to the widow or other beneficiaries. The court is ap-

[223] In 1913 lump sums were paid in the first instance in 6491 cases, and weekly payments ordered in 6014. In 4068 cases weekly payments were redeemed by lump sum payments (by agreement of the parties in all but 313 cases).

[224] Applications of this sort (for renewal) afford a concrete illustration of the attitude of the judges toward compensation claims. When payments cease the employer always takes from the workman a receipt (drawn up by the insurance company) which contains a full discharge from further claim, in words to the following effect: "Received the sums of....., being the amounts mentioned in this form, which I agree to accept in full discharge of all claims whatsoever in respect of all injuries or injurious results, direct or indirect, arising or to arise from an accident which occurred to me on or about the....., 191...., whilst in the employ of..... This receipt has been read over to me, and I understand the meaning of same." Nevertheless, if incapacity does in fact recur, the judge will disregard such a receipt and hear the applicant's claim.

[225] In 1913 there were 3214 agreements recorded for changes in weekly payments; upon arbitration the amount of weekly payment was increased in 38 cases, decreased in 212, terminated in 198, suspended in 1, and renewed in 18; 148 applications for review were dismissed, 231 settled, and 89 heard in respect of the apportionment of agreed compensation amongst dependents. There were only two applications for third-party indemnity by respondents.

pointed by the Act a trustee of the fund for the dependents,[226] and will always administer it as an annuity so as to spread the benefit over the longest possible period. After the fund is paid in an application must be made by each dependent personally to the judge and the judge will make an order for weekly or monthly payments, graduated according to the needs of the dependent.[227] Where special sums are required by the dependent, as for expenses caused by illness, or to purchase clothing for children, *etc.*, application must be made in person to the judge who will consider it on its merits; so also where the dependent desires to have the size of the payments increased or varied for any reason. Some judges hear these applications privately instead of in open court, which makes for a better understanding of the applicant's needs. It is the common experience of the judges that the dependents are improvident, and must be guarded against wasting what appears to them an inexhaustible source of supply. A very frequent failing among workmen's widows is the belief in their certainty of success if only they can open a shop—a snug little greengrocer's or tobacconist's or fried fish shop—and sometimes they persuade the judge to let them draw out their money for such an investment. But they almost invariably lose every penny of it, as the keeping of accounts is to them an unsolved riddle. From the personal point of view the administration of these funds is a most interesting part of a county court judge's duties, as he is put *in loco parentis* to a large class of poor beneficiaries who before the Act might have received little or no help in their troubles. A useful power in this connection is that which permits the court to transfer any part of the fund to any other court where dependents live.[228]

Weekly payments, however, are paid directly to the workman, except in cases where he is an infant or under other disability, when application may be made to have them paid into court for his benefit.

[226] Act, Schedule I (5).

[227] See W. C. R. 60.

[228] Act, Schedule I (6).

Some idea of the volume of administrative and banking work thrown upon the county courts by the Act may be gleaned from the fact that in 1913 the total of lump sum payments into court amounted to well over £700,000, all of which had to be invested, and payments from which, in amounts averaging perhaps ten shillings a week, had to be supervised.

9. The weakest point in the administration of the Act is felt to be something which has nothing to do with county courts: it is the right of appeal to the Court of Appeal and then on to the House of Lords. This is an expensive and dilatory process, usually fought out between the employer's insurer and the workman's union, in a field where expense and delay both defeat the objects of the Act. In addition, the Court of Appeal, more secluded than the county court judges from the actual industrial conditions to which the Act applies, has always been far more technical and legal in its interpretation; its sympathies with the principles of the Act (which derogate so greatly from the common law) have never been great, and many of its interpretative decisions have hampered rather than helped the county court in working out the benefits the Act bestows.[229]

VI. Defended Actions.

In Section I it was observed that the large bulk of county court actions are undefended and only a short paragraph (number 3) was devoted to steps taken by the defendant between service and trial. In really defended actions, however, it is possible for a defendant to do practically everything he can do in the High Court, and although numerically these defended actions bulk very small, yet, by reason of the fact that one of them takes more of the judge's time than a score of undefended actions do of the registrar's, they are sufficiently numerous to make the judge's court often, for all practical purposes, a branch of the High Court.[230] Some comments on the procedure in such actions will not be amiss.

[229] See E. A. Parry: The Law and the Poor (1914), chapter on Workmen's Compensation, p. 76.

[230] An average of 530 cases was tried by each judge in 1913.

1. The most conspicuous feature is the absence of pleadings. It is surprising how little inconvenience seems to be caused by this. On the whole it is undoubtedly a great advantage to the court. In the tens of thousands of actions where there is no or little defence offered it would be absurd to allow the defendant, by putting in a pleading, to increase the costs or to delay the judgment. He comes to the court and tells his story and that is all the pleading he requires. If he has any special defence he gives notice of it in the form provided. But there is a residuum of actions in which the issues are not so simple, and in those the absence of full and defended pleadings is a disadvantage. The parties find it necessary in such cases to press their opponents for particulars or for discovery, which cost more in the end than pleadings would have. Or, if he does not suspect the defendant's line of attack, a plaintiff will sometimes be completely taken by surprise at the hearing after his whole case is in. However, it is difficult to see how these cases could be separated out from the rest before trial; every action is potentially a defended action and every defendant potentially a mine of legal defences. At present the general feeling is that it is better to put up with the inconvenience in the very small minority of cases, for the sake of the undoubted benefit to the vast majority.

2. If the plaintiff claims more than £2 he must file particulars of the claim. This is all the defendant receives in the nature of a statement of claim, and it is usually nothing more than a copy of the invoice or statement of account which he has doubtless seen before. But in tort actions, such as those for personal injuries (of which very large numbers are begun in the county courts), the plaintiff's particulars are almost never enough and it is practically certain that the defendant will ask for further particulars. In fact it would seem to be worth consideration whether it would not be wise to require a full statement of claim in such cases, and a statement of defence.[231] At

[231] Sir Mackenzie Chalmers believes there ought to be a statement of defence required in every case where over £20 is claimed. 3 Law Quarterly Review 11 (1887).

any rate the defendant has the right in any case to demand fuller particulars; all he need do to get them is to write the plaintiff a letter no less than five days before the return day; if the particulars are not forthcoming within two days more the defendant may apply to the registrar for an order for them, or, at the trial itself, to the judge.

3. The notice of special defence which a defendant is bound to give is self-explanatory.[232] There are, however, interesting collateral requirements.[233] If a defendant gives notice of a set-off or counter-claim he must file particulars as if he were enteringa plaint. If infancy, coverture, or bankruptcy are the special defences, particulars must accompany the notice and a copy of the birth certificate, marriage certificate, or order of discharge must be presented at the hearing, with evidence of the defendant's identity. If the defence is tender, the amount previously tendered must be paid into court when the notice is sent. Statutory or equitable defences must specify the act and section, or other ground, upon which the notice is founded. In none of these cases is the "notice of special defence" in any sense a pleading; the forms given in the appendix to the rules are strictly brief and merely notices. In addition to these there is provision made for a sort of demurrer. The defendant may file a statement disclaiming any interest in the subject-matter of the action, or admitting or denying any of the plaintiff's particulars, or raising any question of law without admitting the plaintiff's statements or stating concisely any new fact or document he intends to rely on as a defence or bring to the notice of the court. This statement would seem to have the germ of a pleading for cases where one is required, but it is, like many other useful rules, allowed to slumber undisturbed, and it is very seldom called into action. The haste with which county court work must be done is the cause of frequent disregard of everything that is not perfectly familiar or obvious. It is also possible for a defendant to save costs by confessing judgment, and that is frequently done.

[232] See Section I of this article, paragraph 2.

[233] Order X.

4. The general principles of capacity to sue, joinder of parties and of causes of action, amendment of claims or documents, and other substantive portions of procedure, are essentially the same in the county courts as in the High Court. A few differences embodied in the Act of 1888 may here be noted. The most common in practice is a section permitting a minor to sue for wages "in the same manner as if he were of full age",[234] that is, in his own name. This eliminates the necessity for bringing in a next friend in what are always small claims. Another section for the protection of workmen makes it impossible for any one to sue for the price of any "ale, porter, beer, cider, or perry" which was consumed on the premises where sold.[235] This is an amusing commentary on what Mr. Masterman, in his rather sympathetic study of the English working classes, calls their "too exuberant thirst for drink".[236]

5. The most fruitful source of interlocutory applications in defended actions is the need, real or alleged, for more knowledge of the opponent's case.[237] The defendant may demand further particulars of the plaintiff. The plaintiff on the other hand knows next to nothing of the defendant's case, unless a notice of special defence is put in, and even that is very brief; the plaintiff must administer interrogatories to ascertain the trend of the defendant's case, and this is a recognized use of that procedure. It is especially frequent in accident cases, where the person injured has usually to rely on the defendant's answers to interrogatories. Leave to administer interrogatories must be obtained, as in the High Court, by submitting the specific questions for the registrar's revision. In commercial cases discovery of documents is frequently demanded and the order for it is granted as a matter of course, as in the High Court, except that in the county court the party asking for it will usually be required to pay down one pound or more as security for the costs; in the High Court security for costs of discovery is practically

[234] Section 96, Act of 1888.
[235] Section 182, Act of 1888.
[236] C. F. G. Masterman: The Condition of England (London, 1909).
[237] Orders XII and XVI.

never asked, although the master may require it if he chooses Notices to admit the validity of certain documents are sometimes served by one party on another, to save the costs of strictly proving them, but this is infrequent, as the rules of evidence are not oppressively observed at trials and documents are usually verbally agreed to without quibble, especially if counsel appear. Payment into court is also frequently done in the county court, and the rules are the same as in the High Court, permitting the payment to be either with a denial of liability (to effect a compromise), or without such denial (merely to save subsequent costs). All interlocutory applications are made to the registrar, who disposes of all but those few which the rules require him to refer to the judge.

6. The trial itself has little to distinguish it from a trial in the High Court except that juries are more rare. In 1913 there were only 776 jury trials, as against 31,087 before a judge alone, and these figures do not include over 5000 hearings in workmen's compensation cases before a judge alone.[238] In any case in the county court where more than £5 is claimed any party has a right to demand a jury trial, and where less than £5 is claimed a jury may be had with the judge's leave.[239] The county court jury contains eight men and their verdict must be unanimous. Juries are seldom asked for unless the claim is over £20. Needless to say the cases in which juries occur most frequently are actions for personal injuries and they are asked for by the plaintiffs. The request for a jury must be filed at least ten clear days before the hearing, with the fee of eight shillings; usually it is filed together with the plaint. In the busy courts it is usual to group together jury cases on one day in the week, or one week in each month, for the convenience of the jurors empanelled as well as of the court. The judge's clerk, in such courts, will send out a notice, or will make verbal inquiries of the solicitors, to ascertain approximately how long each case will

[238] Nor do they include nearly 400,000 cases heard by registrars without a jury.

[239] Section 101, Act of 1888. The following section governs the selection of jurymen.

last, and if it is likely to be settled, withdrawn or postponed;[240] this information enables him to make up a special list of jury trials, for the day or week, and notice of the time fixed is sent out accordingly, because it is sometimes necessary to postpone the hearing day originally fixed.

In this connection it might be mentioned that there are no Poor Persons Rules in the county court, such as have lately been made in the High Court, and that most of the accident cases brought by poor plaintiffs are taken by solicitors "on spec"; solicitors of this type constantly abuse the right to make interlocutory applications, like those for interrogatories, *etc.*, in order to run up the costs, and in this they are assisted by the pernicious English system of itemizing bills rendered by solicitors.

The court has power, upon the application of both parties or upon the application of one party if he shows good cause, or upon its own motion, where it appears from the course of proceedings that the action cannot be tried on the return day, to postpone the trial of any action, and this discretion is often invoked to save the parties inconvenience.[241] The clerks who arrange the return days know pretty well, from experience, about how many actions will drop out and how many will be disposed of on each day, and their arrangement is necessarily only approximate and these rules fill the gap.

A frequent occurrence at the trial is that some one other than the defendant appears and admits that he is the person the plaintiff intended to sue, or ought to have sued; and the rule permits the court, with the plaintiff's consent, to substitute such person's name for the defendant's, so that the trial may pro-

[240] The following is the form used at Clerkenwell, where all actions over £20 (jury or non-jury) are assigned to a "Special Week" in each month:

"Dear Sir:

"Jones v. Brown. Number of plaint, 1525. The above action stands nominally on the list for hearing in the Special Week commencing on the 18th day of January. In order to arrange the list of cases set apart for trial in that week I shall be glad to know whether the above action is likely to be settled, or if not, about how long it may last, and the number of witnesses you are calling. An immediate answer will oblige,

"Yours faithfully,

"A. B.,
"Chief Clerk."

[241] Order XII r. 12-16.

ceed.[242] Again, if a plaintiff or defendant sues or is sued in a representative capacity when it should be personal or *vice versa*, the error may be corrected at the trial if the parties are actually present.[243] If several defendants are sued but some are not served, the names of those not served may be struck out if any at all appear;[244] this is a complement to a section which permits a plaintiff to sue one of the obligors on a joint contract without suing or serving the others.[245]

7. The judge has power, in a proper case, on the application of either party, to summon assessors to sit with him in the trial of any technical or scientific questions of fact, or to refer the whole action, with the consent of both parties, to an arbitrator.[246] This is done sometimes in difficult cases such as those involving builders' accounts, engineering questions, *etc.* In 1913 there were one hundred and twenty-five cases referred to experts as arbitrators, and in fifty-eight cases experts were called in to sit with the judge as assessors.[247]

8. Judgments in the county courts are seldom ordered to be paid in one payment. When the judgment is less than £20 the court can fix such instalments as it deems proper, without the plaintiff's consent.[248] When it exceeds £20 the court can do so only with the plaintiff's consent, but that consent would seldom be withheld. The intervals at which instalments are made payable are usually twenty-eight days. In proper cases, however, the judge may order payment forthwith.[249] After an order has been made for payment of a judgment either in a lump sum or by instalments, and it becomes evident to the creditor that the judgment debtor will not be able to comply with the terms of the

[242] Order XIV r. 4.
[243] Order XIV r. 5-6.
[244] Order XIV r. 9.
[245] Section 97, Act of 1888.
[246] Sections 103-104, Act of 1888.
[247] This does not of course include workmen's compensation cases, where in 1913 a medical expert sat as assessor in 745 hearings.
[248] Section 105, Act of 1888.
[249] Order XXIII r. 12a.

order, there is a rule which permits him to apply to the court for an order reducing the size of the instalments payable, or changing the order for a lump payment into one for instalments.[250] This enables him to save the costs of a judgment summons proceeding and to give the debtor a better chance to pay up. On the converse if the debtor's circumstances change for the better, the creditor may apply for an increase in the instalments payable, or for an order for payment in a lump sum.[251] Neither of these privileges is much availed of by creditors, who seldom seem to think of anything but a judgment summons to enforce a judgment. It used to happen that when a judgment was rendered for payment in one sum of over £50 the debtor would pay into court just enough to reduce the judgment below £50, thereby preventing his creditor from throwing him into bankruptcy for non-payment of the balance.[252] To remedy this a rule was passed in 1914, providing that when lump sum payments over £20 are ordered the registrar is not to accept less than the full amount without the plaintiff's consent.[253]

VII. Judgment Summons.

Imprisonment for debt is a phrase that sounds harshly to American ears and provokes a feeling of repulsion in spite of a passing smile at the memory of *Bardell* v. *Pickwick*. So it does to many English publicists, but a form of it has persisted in the county court since the Debtor's Act of 1869, and still survives all onslaughts directed upon it through the portals of the House of Commons.[254] It may be of interest to consider the opinions, pro and con, upon this power of the court.

As explained in the outline of procedure upon judgment summonses,[255] the imprisonment is supposed to be not for the

[250] Order XXIII r. 14.

[251] Order XXIII r. 15 (2).

[252] One unpaid judgment of £50 is sufficient ground for a bankruptcy petition in England.

[253] Order XXIII r. 12b. See *In re* Miller [1912], 3 K. B. 1.

[254] A short history of imprisonment for debt may be found in Judge Parry's The Law and the Poor, p. 36.

[255] Section I of this article, paragraphs 6 and 7.

debt but for contempt of court in not satisfying a judgment in spite of available means. The Act is so worded, however, that in practice the results are far broader than one would suppose they could be. The material parts of the section are:[256]

" . . . Any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order of judgment of that or any other competent court: Provided . . . .

"2. That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default *either has or has had since the date of the order or judgment the means to pay* the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects to pay the same.

"Proof of the means of the person making a default may be given in such a manner as the court thinks best. . . ."

It is to be noted that the court must be satisfied of the fact of means; this throws the burden upon the creditor to prove a fact of which he can have little first-hand information in the ordinary case. The statute could have put the burden upon the debtor to prove he was without means; but the intention of the legislature was to make it difficult for the creditor to imprison a debtor—the section is part of an Act abolishing all imprisonment for debt, with certain minor exceptions; the statute represents the extreme of the reaction against imprisonment for debt set up by the catalytic agency of Dickens' novels. And yet the very fact that it is the creditor who must prove the point has caused a result the very opposite of that intended by the Act; as will be shown, it has made it easier, not harder, to obtain a committal.

The reason for this surprising reversal of direction is that there is no knowing what the Act means by "means," and that it is sufficient for the debtor to have had "means" not necessarily when the committal order was applied for but at any time since the judgment was entered. This has two unfortunate results: the standard of sufficiency of means varies with every judge; and, what is more unsatisfactory, the creditor is able to rake up the debtor's recent past to find some point of time at which he

[256] Section 5, Debtor's Act, 1869, 32 and 33 Vict., c. 62.

had a small surplus of cash that ought to have been devoted to paying up an instalment of the debt. The net result is that wherever you have a judge whose personal sympathies favor the punishment of improvidents, it is easy for a creditor to get a committal; and where the judge is opposed to imprisonment for debt, committals are few.[257] It becomes, for all practical purposes, imprisonment for debt and not for contempt at all. Unfortunately, too, the majority of the county court judges in the past could not be numbered among the opponents of imprisonment for debt.[258] Drawn from a class that looked instinctively with something like contempt upon the hopeless incapacity of so many workmen to manage successfully their household affairs, they were inclined to require little more than perfunctory evidence of a debtor's having had the ability at some time to pay some part of his debt. Of late years, however, sympathy with imprisonment for debt has been decreasing among the judges and committals have declined steadily in number.

Apart from this uncertainty, there is a purely mechanical difficulty in administering the act which makes its application largely a matter of guesswork. Judgment summonses are handled in such large numbers that it is difficult, if not impossible, to give each one the time it would require for a thorough hearing of all the facts. From fifty to a hundred judgment summonses is the usual list to be cleared off in each day,[259] and the judge must finish them in the first part of the morning before taking up the regular trials. In some courts they are even more numerous and the list may contain several hundred.[260] Many of these are not served, and not proceeded with. Many are settled by a payment into court, and not proceeded with; but

[257] See an article by E. Bowen-Rowlands: County Court Judges and Their Jurisdiction, in 18 Law Quarterly Review 243 (1902).

[258] A committee of county court judges, appointed recently to draw up a statement which would express the considered opinion of all the judges to serve as a uniform guide in all the county courts, was unable to come to any agreement and failed to report.

[259] All judgment summonses are set down for hearing on one or two mornings in each week in every court.

[260] Judge Parry quotes one of his mornings lists which contained 460 judgment summonses.

there is always a solid residue so bulky as to make it imperative for the judge and his clerk to dig through it at top speed. To add to the uncertainty, the debtor fails to appear in a very large number of the cases, usually because he cannot afford to stop work. The creditor, sometimes himself, but more frequently through a debt-collector he has employed, appears and gives evidence of the debtor's earnings, or other means of income; in some courts the registrar will have ascertained at first hand from the debtor's employer what the earnings are; and upon hearing how many children the debtor has to support,[261] the judge will make an order and go on to the next summons. The evidence is in most cases merely hearsay, gathered by the creditor or his agent, from the debtor's neighbors. In short, there is no uniformity in the standard of means, the evidence is usually very scanty, the hearing is apt to be hurried even when the debtor appears, and frequently the debtor does not appear.[262]

Those are objections that spring out of the working of the Act. More fundamental are the objections to the system on principle. There is no need to labor the obvious one that nonpayment of a civil debt should not be punished criminally, and that imprisonment is proper only in cases where there has been actual fraud in obtaining goods or credit. Apart from that, and much more practical and tangible, the strongest objection to the system is inspired by the fact that it promotes the reckless giving of credit by instalment dealers and money lenders to poor customers. The following paragraph from an essay by Judge Parry, the leading opponent of imprisonment for debt,[263] states this view forcibly:

[261] Some judges have adopted a more or less fixed "scale of means" for their district, allowing certain amounts as a fair expenditure for a man and wife and each child, above which any surplus of income ought to be available as "means" to pay debts.

[262] See "How the Machine Works," an essay in Judge Parry's The Law and the Poor, p. 58.

[263] His Honour Judge Edward Abbott Parry served as county court judge for seventeen years in Manchester, and has sat since 1911 at Lambeth (South London). He has published three volumes of legal essays: Judgments in Vacation (1911); What the Judge Saw (1912); The Law and the Poor (1914). The first and third contain essays strongly attacking imprisonment for debt.

"The chief evil of the present system of imprisonment for debt is the undesirable class of trade and traders that it encourages: the money-lenders, the credit drapers, the 'Scotchmen', the traveling jewelers, the furniture hirers, and all those firms who tout their goods round the streets for sale by small weekly instalments, relying on imprisonment for debt to enable them to plant their goods out on the weaklings. The law as it stands assists the knave at the expense of the fool. . . . To a workingman on small weekly wages no credit can be given in any commercial sense. His only asset is character, and there are many retail traders who never come into the county court at all, because they make it a rule only to give credit after inquiry." [264]

And, in another place:

"That indiscriminate credit giving, as permitted in this district (Manchester) is an evil, no one, I think, can doubt, and it seems strange that social reformers pay so little attention to the matter. The whole thing turns, of course, upon imprisonment for debt. Without imprisonment for debt there would be little credit given except to persons of good character. . . ." [265]

By way of corroboration, this passage may be quoted from a legal journal whose opinions are always sound:[266]

"As a matter of fact in the opinion of many observers, workingmen do not, as a rule, go to prison for non-payment of debts for necessaries. Such debts in time of full employment are liquidated out of the week's earnings on pay day, and if the score runs up in bad times, respectable men pay gratefully in time of returning prosperity the shop-keeper who has helped them in their dark hour. It is the tally-man's credit which usually leads its victims to the debtor's prison. These tally-men, especially in the North of England, canvass from door to door and induce the wives of workingmen to purchase unnecessary articles. The unfortunate husband often never hears of the purchase until a judgment summons is issued against him, since personal service of a plaint note is not required in the county court; and when the plaintiff serves the summons at the defendant's house, his wife too often thinks it best to conceal it. To enforce payment of such debts by the process of imprisonment is simply to enforce a vicious system of pushing those trades which minister to luxury, not necessity." [267]

[264] From "The Debtor of Today," an essay in Judgments in Vacation, p. 103.

[265] From "A Day of My Life in the County Court," in Judgments in Vacation, p. 52.

[266] 57 Solicitors' Journal 816 (October 11, 1913).

[267] There is a one-act play on this theme by Judge Parry: The Tallyman (Manchester, 1912).

Finally, another journal associates the decline in the volume of county court plaints in recent years with the growing tendency of county court judges to refuse to grant committals:[268]

"What the late Sir Thomas Snagg[269] called a 'barbarous and baneful' system is, happily, on the wane. The number of debtors imprisoned in 1913 was the lowest for twenty-three years. How rapidly the system has recently declined these figures for nine years will show:

"1905	11,405
1906	11,986
1907	9,214
1908	9,141
1909	8,904
1910	8,189
1911	7,681
1912	5,820
1913	5,711

"The number of debtors sent to gaol in 1913 was, it will be observed, less than half the number in 1906. This decreasing use of the power of imprisonment has, no doubt, some bearing upon the declining number of plaints, for some of the more pernicious forms of credit giving, such as those beloved by money-lenders and the purveyors of cheap jewellery, are largely dependent upon the way in which the power of imprisonment is exercised."

Thus the opponents of the system. And yet their arguments, though often reiterated, have failed so far to produce any material change. A committee of the House of Lords in 1893, and a committee of the House of Commons in 1909 went into the question thoroughly and took voluminous testimony; neither committee was able to recommend the abolition of the system. It was represented to them strongly by various trade bodies that to do away with imprisonment for debt would be to remove the margin of security from the large bulk of small credit transactions throughout the county, the effect of which would be to restrict the granting of credit and so to work great hardship upon the poorer classes. This is the obstacle which has always blocked progress with respect to imprisonment for debt, and it is defended so valiantly by the retail trades that it is fair to

[268] 49 Law Journal 516 (September 5, 1914).

[269] A judge of county courts from 1883 to 1914.

assume there is a certain amount of justification for it. In fact the actual working of judgment summonses bears out the contention—within certain limits; that is to say that the service of the judgment summons, or, later of the committal order, is in almost all cases sufficient to compel payment.

In 1913, out of over four hundred thousand judgment summonses, less than six thousand resulted in the imprisonment of the debtor; the rest were either dropped or satisfied by payment. There is no doubt therefore that as a weapon of execution upon small debts the judgment summons is more efficacious than the *fi. fa.* and it is more frequently used; the *fi. fa.* would be of little use against the great mass of workmen who furnish their homes on the hire purchase principle, or against shifty debtors whose goods are covered by a bill of sale, or against middle class debtors who keep their property "in the wife's name" or whose property is protected by a marriage settlement. Without the judgment summons the creditor would have little or no security against such debtors.

Again, the creditor class urges that in many cases it is virtually obliged to give credit for the necessaries of life, or for furnishings for the home, without which the prospective debtor simply could not make the purchase. The cases of young people newly married, or of families obliged to support children until they are old enough to earn, or of workmen during periods of unemployment, are especially emphasized. And further, the traders contend that the danger of imprisonment for debt is greatly exaggerated because the total number of debtors who are brought into the county court is insignificant compared with the enormous volume of credit transactions constantly being made. Lastly they submit that the business system of the country requires a free flow of credit and that anything which clogs the free granting of credit to small buyers will choke up the channels of trade at their very source.[270] To this must be added a curious argument put forward by the representatives of organ-

[270] These arguments are gathered from the testimony of numerous business representatives before the two committees. The reports and evidence were published as Blue Books: R. 156 (1893) and R. 239 (1909).

ized labor; they uphold the system because without it they believe credit would be hard to get, and without easy credit there would be no possibility of prolonging a strike after their own accumulated funds began to give way.

Evidently there is room for argument on both sides of this question. The principal contention on one side is that without the safeguard of imprisonment, credit could not be given in a large number of cases where it is necessary; and on the other side it is contended that credit is given in a reckless and indiscriminate way and that extravagances are urged upon people who are not able to afford them, just because of this safeguard of imprisonment. Both sides may be right but the fact that, in spite of a steady decrease in committals over a period of a decade, nearly six thousand debtors were imprisoned in 1913, most of whom must have been without the means to pay, inclines the impartial observer to favor the opponents rather than the defenders of the system. As the *Solicitors' Journal* remarks pithily,[271] "credit may be necessary at times for the working class population, but it by no means follows that imprisonment is essential to secure it." Various compromises have been proposed, short of abolishing imprisonment, to satisfy the legitimate claims of both sides in the controversy. The general trend of these is that no imprisonment should be permitted where the debt is owing to a money-lender or to a jeweller, that it should be restricted to debts incurred for necessaries (leaving it to the judge to determine what are necessaries, as he does now in the case of infants), that it should be limited to such creditors as doctors, food suppliers, *etc.*, who are virtually compelled to give credit, and that it should be limited to debts of not less than £2 (on the theory that such a limit would catch the real contempt cases and pass over the very poor debtor's head).[272]

On the whole one gets the impression from the discussion that whatever merit there is in imprisonment for debt (or for

[271] 53 Solicitors' Journal 741 (August 14, 1909), commenting adversely on the report of the 1909 Committee of the House of Commons.

[272] These suggestions are contained in various appendices to the evidence in the Report of 1909.

contempt in not satisfying judgments) the system carries with it too great danger of being pushed to extremes by overzealous administrators and by unscrupulous traders. Many thoughtful people in England wish England were rid of it, and there is little doubt it would be playing with fire to introduce it again in any American state.

Samuel Rosenbaum.

London.